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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,981	03/11/2004	Dennis Eugene Kuhlman	9576	4999

EXAMINER	
MAHYERA, TRISTAN J	

ART UNIT	PAPER NUMBER
1609	

MAIL DATE	DELIVERY MODE
09/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/797,981

Applicant(s)

KUHLMAN ET AL.

Examiner

Tristan J. Mahyera

Art Unit

1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 06/14/2004, 08/18/2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group I, claims 1-10 and 15-19, in the reply filed on 08/08/2007 is acknowledged.
2. Claims 11, 12, 13, 13(2<sup>nd</sup>) and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08/08/2007.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5, 7, 10, 16 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by ELLIS et al. (US 2006/0165642).
5. ELLIS describes hair treatment compositions such as a shampoo or conditioner. See abstract. ELLIS contains an alky ethoxylated polymer, a cleaning or exfoliating agent, a cross-linked acid polymer and an anionic, amphoteric or zwitterionic surfactant.

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The ethoxylated polymer is, for example, polyoxyethylene, a mono-alkyl polymer from 0.1 to 15 wt%. See paragraphs [0062] and [0063]. A cleaning surfactant/agent, for example, alkyl succinates is described in paragraph [0024]. ELLIS includes specific cross-linking acid polymers of acrylic acid and acrylate esters such as Carbopol. See paragraphs [0064] and [0065]. The anionic, amphoteric or zwitterionic lathering surfactants of the instant claims are disclosed in paragraph [0022] and specific examples, such as, sodium lauryl sulfate can be used from 5-30 wt% of the composition. See paragraphs [0023]-[0026]. Additionally, Amphoteric and zwitterionic surfactants are disclosed in the composition from 0 to 8 wt%. See paragraph [0027].

6. Therefore, claims 1-3, 5, 7, 10, 16 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by ELLIS.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 4, 6, 8, 9, 15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over ELLIS et al. (US 2006/0165642) in view of MCKELVEY et al (US 6,589,517) and in view of SCHMUCKER-CASTNER et al (US 6,635,702).

ELLIS is described above. ELLIS does not describe di, tri or tetra-alkyl ethoxylated polymers, however, ELLIS does suggest generally alkyl ethoxylated polymers, see paragraphs [0062] and [0063]. Furthermore, ELLIS does not specifically name alkali-swelling acrylate copolymers, but it does suggest using cross-linked copolymers.

MCKELVEY teaches hair care compositions containing PEG-120 methyl glucoside dioleate (Glucamate DOE 120 from Amercol) a tri-alkyl ethoxylated polymer. MCKELVEY also describes PEG-150 pentaerythrityl tetrastearate (Crothix from Croda) a tetra-alkyl ethoxylated polymer.

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SCHMUCKER-CASTNER teaches a stable aqueous composition containing a cross-linked alkali-swellaable acrylate copolymer for use on a subject's hair. It also teaches that these copolymers are common in the art and a person of ordinary skill would be able to determine an effective amount to give an appropriate BYV. See abstract and column 10 lines 8-23.

11. Therefore, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to include di, tri or tetra-alkyl ethoxylated polymers thus resulting in the practice of the instant claimed invention with a reasonable expectation of success.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tristan J. Mahyera whose telephone number is 571-270-1562. The examiner can normally be reached on Monday through Thursday 9am-4pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TJM/

  
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